

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JIMMIE HORNE,

Plaintiff,

v.

OPINION and ORDER

DR. DAUGHTRY, and RN MATUSHAK,

23-cv-621-jdp

Defendants.

JIMMIE HORNE,

Plaintiff,

v.

OPINION and ORDER

DR. BREEN, DR. HAMILTON, MS. WOLF,
MS. BERG, MS. PERTTU, and LT. LANNOYE,

23-cv-622-jdp

Defendants.

Plaintiff Jimmie Horne is currently an inmate at Green Bay Correctional Institution and is proceeding without counsel on Eighth Amendment medical care claims and excessive force claims in two cases before this court. *See Horne v. Daughtry*, No. 23-cv-621-jdp; *Horne v. Breen*, No. 23-cv-622-jdp. After all defendants in both cases moved for summary judgment on exhaustion grounds, Horne moved to voluntarily dismiss his cases. No. 23-621, at Dkt. 44; No. 23-622, at Dkt. 39. But each of Horne's motions to voluntarily dismiss named only one of the multiple defendants in the respective cases, so it was not clear from Horne's motions whether he wanted to dismiss the entire case or if he wanted to only dismiss one of the defendants in each case. I directed Horne to inform the court whether in each case he was seeking to dismiss the entire case. No. 23-621, at Dkt. 45; No. 23-622, at Dkt. 40.

Horne has not responded to the court's orders and has not filed an opposition to the defendants' motions for summary judgment in either case. Defendants in both cases ask the court to grant their unopposed motions for summary judgment for failure to exhaust and dismiss his cases on the merits rather than allow Horne to voluntarily dismiss his cases. No. 23-621, at Dkt. 47; No. 23-622, at Dkt. 41. But dismissal on the merits of a motion for summary judgment based on failure to exhaust administrative remedies is without prejudice. So the outcome is the same regardless of whether I decide the merits of the summary judgment motions concerning exhaustion or allow Horne to voluntarily dismiss his cases. I will grant defendants' motions for summary judgment for failure to exhaust and dismiss both of Horne's cases without prejudice.

ORDER

IT IS ORDERED that:

1. The motion for summary judgment on exhaustion grounds by defendants Rachel Matushak in case No. 23-621, Dkt. 39, and defendant Barry Daughtry's motion to join the motion for summary judgment, Dkt. 42, are GRANTED as unopposed.
2. The motion for summary judgment on exhaustion grounds by Dr. Breen, Dr. Hamilton, Ms. Berg, Ms. Perttu, Ms. Wolf, and Lt. Lannoye in case No. 23-622, Dkt. 33, is GRANTED as unopposed.
3. The clerk of court is directed to enter judgment in both cases and send plaintiff copies of this order and the judgments.

Entered November 5, 2024.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge